

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office action dated August 29, 2005 are respectfully requested. Applicants thank the Examiner for an indication that claims 2-4 and 15-31 are allowable.

I. Amendments

Claim 1 is amended to recite the HDL test pad and reagent pad are joined by a bond selected from a heat formed bond and an acrylic acid copolymer adhesive bond. Basis for this amendment can be found in original claims 2 and 3.

Claim 4 is amended for proper dependency.

New claims 32-37 find basis in the disclosure on page 10, line 31 through page 11, line 2.

No new subject matter is added by way of these amendments.

II. Rejections under 35 U.S.C. §102

Claims 1, and 5-14 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Jones *et al.* (US 2003/0224471, hereinafter "the '471 application").

Claims 1, and 5-14 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Jones *et al.* (US 2003/0166291, now U.S. Patent No. 6,881,581, hereinafter "the '581 patent").

These rejections are respectfully traversed for the following reasons.

A. The Invention

The present invention, as embodied by claims 1 and 5-14, relates to an assay device for measuring serum cholesterol associated with high-density lipoproteins (HDL) in a blood fluid sample containing lipoproteins other than HDLs.

B. The Cited Art

THE '471 APPLICATION describes an assay device and method for measuring the concentration of HDL-associated cholesterol in a blood-fluid sample. The assay device

comprises a plurality of porous elements and mounting means to adjust the device between a sample-distribution position and a test position.

THE '581 PATENT relates to an assay device and method for measuring the concentration of HDL-associated cholesterol in a blood-fluid sample. The assay device comprises a sample distribution matrix, an HDL assay element, a reagent pad, and mounting means.

C. Analysis

In view of Applicant's amendments, withdrawal of the rejections under 35 U.S.C. §102(e) is respectfully requested.

III. Obviousness-type Double Patenting Rejections

Claims 1 and 5-14 were rejected under the judicially created doctrine of obviousness-type double patenting as being directed to an invention not patentably distinct from claims 1-6, 8, 10, and 13-16 of co-owned U.S. Patent No. 6,881,581.

Claims 1 and 5-14 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being directed to an invention not patentably distinct from the pending claims 1, 3-10, and 12-14 of co-pending U.S. Application No. 10/410,671.

In view of the amendments to the claims, Applicant's respectfully request withdrawal of the obviousness-type double patenting rejections.


IV. Conclusion

In view of the foregoing, Applicant submits that the claims pending in the application are in condition for allowance. A Notice of Allowance is therefore respectfully requested.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4410.

Respectfully submitted,

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